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## Internal Revenue Service IRS.gov

DEPARTMENT OF THE TREASURY

### The Newsroom

#### Geographic Boundaries Determined for Tax Incentives Associated with "Former Indian Reservations in Oklahoma"

ATTACHMENT "B"

##### Return to Oklahoma Page

After extended work, the IRS and the Department of the Interior determined the specific Oklahoma geographic boundaries related to special federal tax incentives associated with "former Indian reservations in Oklahoma."

##### Background

The Revenue Reconciliation Act of 1993 provided for substantial tax incentives based on certain business activity within Indian reservations. Those incentives are an employment tax credit for employers of certain enrolled tribal members and their spouses who work within an Indian reservation, and an accelerated depreciation allowance for certain business property used within an Indian reservation.

Since Oklahoma has a large Indian population but does not currently have any Indian reservations, lawmakers wanted to insure those benefits would be available to those involved in business activity in Oklahoma by including in the legal definition of "Indian reservation" the term "former Indian reservations in Oklahoma."

The law, however, did not specifically define where in the state of Oklahoma the geographic boundaries of former Indian reservations lie. While the IRS was working on making such a determination, Congress wrote a 1997 amendment to the original law which defined "former Indian reservations in Oklahoma" as those lands within what is regarded as the then-current "jurisdictional areas" of Oklahoma Indian tribes. Further, the law required those jurisdictional areas be determined by the Secretary of the Interior (the Secretary).

##### The Determination

As stated in IRS Notice 98-45, (IRS 1998-35 August 31, 1998) the determination has been made that "former Indian reservations in Oklahoma" are those lands within the boundaries of the last treaties, Executive Orders, federal agreements, federal statutes, and Secretarial Orders with the Oklahoma Indian tribes.

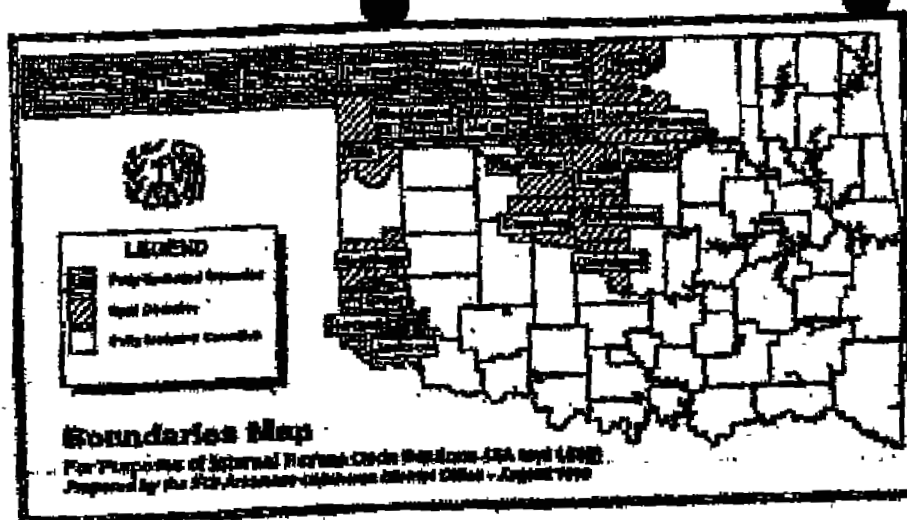
##### Geographic Descriptions

With that determination, IRS engineers in Oklahoma City reviewed the treaty boundaries provided by the Secretary and prepared a map of Oklahoma showing the counties which are fully within such boundaries (fully eligible counties), the counties fully outside of such boundaries (fully ineligible counties), and the counties where the treaty boundaries do not necessarily or completely match current county boundaries ("split" counties). Listed here are the 11 split and 13 ineligible counties:

- Split Counties: Beckham, Canadian, Cleveland, Ellis, Kay, Kingfisher, Logan, Nowata, Oklahoma, Pawnee, Payne.
- Fully Ineligible Counties: Alfalfa, Beaver, Cimarron, Garfield, Grant, Greer, Harmon, Harper, Jackson, Major, Texas, Woods, Woodward.
- Fully Eligible Counties: All counties other than those listed above (53 in number).

<http://www.irs.gov/newsroom/article/0,,id=99491,00.html>

7/2/2004



### Split County Descriptions

Here are descriptions of the boundaries in the split counties which identify their locations. In some cases, exact boundary line determinations do not follow existing roads or other landmarks. Taxpayers requiring exacting determinations in these situations may wish to obtain assistance from someone skilled in reading legal land descriptions, such as the county assessor of the county in question.

These descriptions identify eligible areas of the specific counties.

**BECKHAM COUNTY:** Everything north of the North Fork of the Red River.

**CANADIAN COUNTY:** Everything west of the 98th Parallel. (The 98th Parallel is an imaginary north-south line which, in central and south Canadian County, is located between Air Port Road and Reformatory Road. It is located just west of the western edge of El Reno Lake.)

**CLEVELAND COUNTY:** Everything from the eastern county line to a north-south line which runs from the northern county line to the Canadian River, and is located 1/2 mile west of 132nd Avenue SE, which is also known as Indian Meridian Road. (U.S. Geological Survey maps show this line as the "Old Indian Treaty Boundary," which is halfway between 132nd Avenue SE and 120th Avenue SE, which is also known as Chopaw Road.)

**ELLIS COUNTY:** Everything south of the original boundary of the Cherokee Outlet. (This is about two miles north of Amarillo. It is the line shown on the newest Oklahoma Department of Transportation County Road Map as "Old Indian Treaty Boundary." This line runs even with the southern edge of Woodward County and extends across Ellis County straight west to the Texas border.)

**KAY COUNTY:** (1) Everything east of the Arkansas River and Kaw Lake, and (2) Everything south of a line which begins at the western county boundary (156th Street) and Coleman Road and runs east along Coleman Road to Indian Meridian/P Street, then south along Indian Meridian/P Street to North Avenue, then east along North Avenue to the Arkansas River. (This area (area (2)) is also described as everything within 8 miles of the south county line (south of North Avenue, T25N R2W, T25N R1W, T25N R1E, T25NR2E), and everything in a 6 x 12 mile block from the west edge of the county to Tonkawa (bounded by Coleman Avenue, Indian Meridian/P Street, and North Avenue, T25N R2W, T25N R1W)).

**KINGFISHER COUNTY:** Everything south of the Cimarron River which is also west of the 98th Parallel. (The 98th Parallel is an imaginary north-south line which, in Kingfisher County, is located a little over one mile west of where U.S. Highway 81 passes through Okemah.)

**LOGAN COUNTY:** Everything east of the Indian Meridian, also known as Indian Meridian Road. (Indian Meridian Road is the section line road between Langston and Coyle.)

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**NOBLE COUNTY:** Everything bounded by the county lines on the north and east, by the Indian Meridian on the west, and, on the south, by the east-west road about 3-1/2 miles south of where the Cimarron Turnpike crosses U.S. Highway 177. (Everything in T22&23N-R1&2E, T24N-R1 thru 4E, T25N-R3&4E) (The Indian Meridian in Noble County is a north-south line in alignment with the section line road two miles east of U.S. Highway 77.)

**OKLAHOMA COUNTY:** (1) Everything east of Indian Meridian Road, and (2) The 1/2 mile-wide strip of land bounded on the north by the North Canadian River just north of where it crosses 63rd Street in R1W, on the south by the southern county line, on the west by a north-south line in alignment with McDonald Road in Choctaw, and on the east by Indian Meridian Road.

**PAWNEE COUNTY:** Everything west of the eastern edge of R8E. The eastern edge of R8E in Pawnee County runs north-south from the Arkansas River to the southern county line. In northeastern Pawnee County, the eastern edge of R8E is in alignment with an unnamed north-south paved section road on the west side of the town of Blackburn. This road runs from the Arkansas River south to its junction with U.S. Highway 84, which is two miles west of Oklahoma Highway 86's junction with U.S. Highway 84. This unnamed road is unofficially known as "the Blackburn road."

**PAYNE COUNTY:** (1) Everything south of the Cimarron River, and (2) In the area north of the Cimarron River, everything east of a section line road located three miles west of the junction of Oklahoma Highway 18 with Oklahoma Highway 61 (the miles east of the junction of Oklahoma Highway 108 with Oklahoma Highway 61).

33.

EXHIBIT B

**FILED**  
JUL 16 2004

**BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA  
CORPORATION COMMISSION  
OF OKLAHOMA**

APPLICATION OF DOBSON CELLULAR SYSTEMS, INC. FOR CERTIFICATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996 )  
CAUSE NO. FUD 200300239 )

**APPEAL AND EXCEPTIONS OF DOBSON CELLULAR SYSTEMS, INC.**

**I. INTRODUCTION AND EXECUTIVE SUMMARY**

In accordance with OAC 165:5-13-5, Dobson Cellular Systems, Inc., for itself, and on behalf of its subsidiary licenses, Oklahoma RSA 5 Limited Partnership and Oklahoma RSA 7 Limited Partnership ("Dobson") hereby submits its Appeal and Exceptions to the Report of the Administrative Law Judge ("ALJ Report") filed on July 7, 2004, in the above-captioned proceeding.

On May 2, 2003, Dobson filed an Application with the Oklahoma Corporation Commission ("Commission") seeking designation as an eligible telecommunications carrier ("ETC") for purposes of obtaining federal universal service support. Specifically, Dobson requested designation in certain wire centers served by Southwestern Bell Telephone Company ("SWBT") and Valor Telephone Company ("Valor"), as well as the study areas of rural telephone companies, Beggs Telephone Company, Canadian Valley Telephone Company, Carnegie Telephone Company, Dobson Telephone Company and Oklahoma Telephone & Telegraph, Inc. (collectively, the "rural ILECs"). Dobson did not seek designation for purposes of the Oklahoma Universal Service Fund ("OUSF").

Dobson's Application makes clear that Dobson meets all standards for designation in the requested areas. A Stipulation<sup>1</sup> was reached by all parties, including Commission Staff,

<sup>1</sup> (Exhibit 29.)

representing unanimous agreement that Dobson's Application should be granted subject to certain conditions set forth in the Stipulation. The ALJ recognized Dobson was deemed to satisfy all applicable prerequisites to ETC designation under the Stipulation: "The Stipulation in this Cause indicates that Dobson should be designated an ETC because it meets or has agreed to meet certain specific conditions as a prerequisite to being designated an ETC." ALJ Report, p. 21.

The Stipulation was not without a cost to Dobson. Dobson agreed to several conditions with respect to customer requests for service, reporting of universal service offerings, reporting and utilization of support, and customer complaints and customer service. Many of these conditions meet or exceed the Commission's new wireless ETC regulations, discussed more fully below. It was understood by the parties that the conditions of the Stipulation, coupled with the express ETC obligations under federal law, established a basis for the Commission's approval of Dobson's request for ETC status.

The Stipulation was presented to the ALJ and supported by testimony at a hearing on November 19, 2003. The testimony confirmed that the Stipulation reflects the agreement of all parties that Dobson should be designated as an ETC:

Q: And subject to the agreement of Staff that is currently reviewing the stipulation, is it your understanding that the parties have agreed that Dobson should be designated as a federal ETC as requested in its application subject to the Commission's further approval of the stipulation and further conditions relating to its designation?

A: Yes, that is my understanding.<sup>2</sup>

The ALJ Report recommends that Dobson be designated as an ETC where requested, but subject to several untenable and indeed unlawful conditions. The ALJ Report recommends a

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<sup>2</sup> (Tr. 17) (questioning of Thomas Coates). Staff later agreed to the Stipulation.

result that requires the Commission to essentially reject the parties' Stipulation, deviate from the plain language of Section 214(e) of the Act, ignore the conclusions of the FCC, disregard Oklahoma law, including the new wireless ETC rules, and adopt an outcome that delays and avoids competition, thereby denying consumers access to competitive universal service offerings. The Commission must reject the conditions of the ALJ Report because they are unsupported by substantial evidence in the record, and the summary legal conclusions are directly contrary to governing law. Specifically, Dobson objects to the following conditions by the ALJ:

1. Mandatory tariff filing requirements;
2. Misapplication of the wireless ETC rules as condition for ETC designation;
3. Imposition of a 1,000-minute minimum local usage requirement;
4. Imposition of carrier of last resort obligations; and
5. Other purported public interest conditions relating to rate regulation and dependent on other wireless ETC designations.

The ALJ's proffered recommendations should be rejected for several reasons. The proposed tariff requirements are inconsistent with both the Commission's own rules and the Stipulation reached by all parties to this action. The recommendation that Dobson submit to the Commission's new wireless ETC rules misreads the scope of OAC 165:55-23-1, *et seq.* The proposed local usage requirement is inconsistent with the ALJ Report itself, beyond the Commission's authority, and contrary to federal law. The conclusory recommendation to impose carrier of last resort obligations similarly lacks factual support, is inconsistent with Oklahoma law, and indeed contravenes federal authority. Finally, the purported "public interest" conditions are internally inconsistent, lack any factual or legal support, and are contrary to federal law, the wireless ETC rules and the parties' Stipulation in this proceeding.

For the reasons set forth below, the Commission should accordingly proceed to grant ETC status to Dobson subject only to those conditions established in the Stipulation and the recently revised wireless ETC rules set forth in OAC 165:55-23-1, *et seq.* ("Wireless ETC Rules").

## **II. THE ALJ REPORT**

Many provisions of the ALJ Report in fact establish the proper legal framework for the Commission to designate Dobson as a federal ETC. The ALJ properly recognized that federal law, specifically 47 U.S.C. § 214(e), governs the designation of a federal ETC. ALJ Report, pp. 18-19. Under Section 214, a carrier is eligible for ETC designation if it is a common carrier, provides the supported services throughout designated areas, and advertises the availability and prices charged for those services. 47 U.S.C. § 214(e)(1). For areas already served by a rural telephone company, the designation must also serve the public interest. 47 U.S.C. § 214(e)(2).

Dobson's request for designation in the areas of SWBT and Valor was unopposed. The ALJ expressly found that Dobson satisfied the Section 214(e)(1) criteria, governing designation in non-rural carrier areas, including the provision of the supported services. ALJ Report, pp. 20-22. Accordingly, the ALJ correctly recommended that Dobson be designated as an ETC in the non-rural telephone company areas of SWBT and Valor. *Id.* at 20.

In addressing the public interest for purposes of designation in the rural telephone company service areas, the ALJ identified four (4) general principles to govern the public interest analysis, namely, the benefits to the public, the advancement of universal service, the increased availability of telecommunications services to those presently without service, and any adverse effect on the public. ALJ Report, pp. 25-26. The ALJ similarly acknowledged that the public interest analysis should be governed by the FCC's standard set forth in *Virginia Cellular*.



*LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, PCC 03-338 (rel. Jan. 22, 2004) ("*Virginia Cellular*"). ALJ Report, p. 22.

But after acknowledging the governing law and identifying public interest principles, the ALJ inexplicably disregards the FCC's well-accepted analysis and recommends that several unfounded, and indeed unlawful, conditions be imposed for the public interest to be served. ALJ Report, pp. 23-28. Specifically, the ALJ declared that the public could not benefit from Dobson's designation as an ETC unless Dobson "agreed" to be bound by OAC 165:55-23-1, *et seq.* Despite her prior conclusion that Dobson provides each of the supported services, including local usage, the ALJ recommends that Dobson be required to provide a minimum of 1,000 minutes of local usage. Dobson was also required to agree to accept carrier of last resort ("COLR") obligations, as well as to file tariffs before providing service. ALJ Report, p. 27. Most remarkably, the ALJ summarily concluded that Dobson should not be designated in any rural telephone service area unless its rates are regulated and another wireless carrier is also designated as an ETC for that area. ALJ Report, p. 28.

These arbitrary and capricious conditions recommended by the ALJ lack any factual support in the record, and are contrary to federal law and the Commission's own rules governing wireless ETCs. Accordingly, the Commission must reject these unlawful burdens and designate Dobson as an ETC consistent with the conditions of the Stipulation and its new Wireless ETC Rules.

### **III. EXCEPTIONS**

Exception 1: The ALJ erred by recommending tariff requirements contrary to the Commission's Wireless ETC Rules and the Stipulation. The ALJ's second recommended condition should be rejected by the Commission.

The Commission should reject the ALJ's tariff filing requirements set forth in the ALJ Report. The proposed condition is contrary to the Wireless ETC Rules and the Stipulation. Since the Commission has already established the applicable filing requirements for a wireless ETC, the ALJ's condition must be rejected.

The second condition of the ALJ would require Dobson to:

furnish the Director of the Public Utility Division copies of its universal service offerings for which Dobson seeks federal universal service support, within 180 days of the Commission Order granting Dobson ETC status, or at least 30 days prior to commencing to provide the supported services, whichever shall occur first. Failure to submit the required tariffs within 180 days of ETC designation may result in revocation of the ETC designation for Dobson, after notice and hearing.

ALJ Report, p. 27.

Yet, the Commission's new Wireless ETC Rules already set forth the filing requirements of a wireless ETC. The Commission's rule requires that at least 30 days prior to providing the supported services for purposes of receiving universal service funding, a wireless ETC must "make an informational filing with the Commission of a complete set of its tariffs or service offerings containing all of its supported services." OAC 165:55-23-3 (emphasis added). Unlike the ALJ's proposed condition, the Commission's rule does not mandate the filing of only "tariffs" for the service offerings. Any informational filing of Dobson's service offerings is sufficient, presumably since Dobson's terms and conditions of service are set forth in a customer service agreement. The Commission's rules, which must govern this case, were simply ignored by the ALJ.

The ALJ's proposed second condition also departs from the Stipulation reached by all parties without explanation. Per the terms of the Stipulation, Dobson agreed to submit to the Director of the Public Utility Division copies of its universal service offerings at the time such services are offered to the public. Stipulation, ¶ 2. Again, like the Commission's rules, these filing requirements are not dependent on the date of a Commission Order granting ETC designation, but rather are triggered by the actual provision of supported services.

Accordingly, the ALJ's proposed tariff requirements are inconsistent with both the Commission's own rules and the Stipulation reach by all parties to this action. As a result, this condition must be rejected by the Commission.

**Exception 2: The ALJ erred with respect to applying OAC 165:55-23-1, et seq. The ALJ's third recommended condition should be rejected by the Commission.**

A fundamental flaw underlying the ALJ Report is a misapplication of the Commission's recently enacted regulations governing wireless ETCs. See OAC 165:55-23-1, et seq. The ALJ's misapplication and, at times, disregard for the Commission's rules pervade the unlawful conditions set forth in the ALJ Report and should be rejected.

The Wireless ETC Rules represent the Commission's considered determination as to the exclusive requirements to apply to wireless ETCs. The Wireless ETC Rules set forth several conditions and requirements "pertain[ing] to the provision of Supported Services by designated wireless Eligible Telecommunications Carriers." OAC 165:55-23-1. Among these requirements are the filing of various records with the Commission (OAC 165:55-23-3), minimum service standards (OAC 165:55-23-11), extension of facilities (OAC 165:55-23-13), and Lifeline and Link Up programs (OAC 165:55-23-15, 17). There is no basis for the ALJ to propose, let alone adopt, additional conditions or requirements for wireless ETC applicants beyond the Wireless ETC Rules.

The ALJ's misapplication of the Wireless ETC Rules is evident by the third recommended condition. The ALJ proposes a condition that the Wireless ETC Rules be extended to apply to all of Dobson's product offerings, not just the Lifeline and Link Up services. ALJ Report, p. 27.<sup>3</sup> The ALJ stated that these regulations "are applicable...only to the provision of 'Lifeline Service' and 'Link Up' by designated wireless ETCs." ALJ Report, p. 21 n.21. However, this condition is unnecessary since there is no such limit on the application of the Wireless ETC Rules. In fact, the Commission's Wireless ETC Rules by their terms already apply to all service offerings of a wireless ETC within a designated area. See OAC 165:55-23-1. Lifeline and Link Up programs are addressed in the rules, but by no means do they constitute the beginning and end of the Commission's rules to govern wireless ETCs.<sup>4</sup>

Likewise, it is not necessary for the Commission to condition the designation on Dobson's "agreement" to be bound by the requirements. The Wireless ETC Rules will be applicable by operation of law once Dobson is designated irrespective of any such agreement. The ALJ's recommendation to require Dobson to "agree" to standards which the law imposes is simply redundant and further illustrates the ALJ's misapplication of the Commission's governing regulations.

Accordingly, the Commission should reject the ALJ's third condition as unnecessary.

**Exception 3: The ALJ erred by recommending an unlawful local usage condition. The ALJ's fourth recommended condition should be rejected by the Commission.**

The Commission should reject the ALJ's recommendation on local usage. The ALJ recommends imposing a 1,000-minute minimum local usage condition on every Dobson

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<sup>3</sup> The ALJ failed to explain how the promulgated regulations could be unilaterally expanded to only apply to Dobson without the Commission first conducting a lawful rulemaking proceeding to expand their scope.

<sup>4</sup> The initial draft of the Wireless ETC Rules may have applied only to Lifeline and Link Up, but the Commission determined to adopt the rules without any such limitation.

universal service offering. This condition is inconsistent with the ALJ Report itself, beyond the Commission's authority, contrary to the FCC's *Virginia Cellular* decision, and unlawful under federal law.

**A. The local usage condition is inconsistent with the ALJ's findings and conclusions in the ALJ Report**

The ALJ determined that Dobson should be designated unconditionally in the SWBT and Valor service areas. ALJ Report, p. 20. This necessarily means that Dobson meets all requirements of a federal ETC, including the requirement to provide an amount of local usage in service offerings as a supported service. 47 C.F.R. § 54.101(s)(2). In fact, the ALJ expressly found and concluded that "Dobson will provide the services supported by federal universal service mechanisms." ALJ Report, p. 22. This conclusion necessarily demonstrates that Dobson satisfies the FCC's applicable requirements for local usage.

But then the ALJ mysteriously recommends that the Commission require Dobson provide at least 1,000 minutes of local usage with each of its universal service offerings before it can be designated as an ETC. ALJ Report, p. 27. Yet, as explained above, the ALJ already found that Dobson met the local usage requirement. ALJ Report, pp. 22, 27. The ALJ's attempt to impose this 1,000-minute requirement is simply irreconcilable with the ALJ Report's express findings and must be rejected by the Commission.

The ALJ's arbitrary and capricious standard is compounded by the fact that now there are three different minimum-minute standards for wireless ETCs. Epic Touch and Panhandle Wireless have been subjected to 500-minute minimums, Dobson and United State Cellular face 1,000-minute minimums, and Western Wireless is left with no minimum requirement at all. This inexplicable distinction among wireless carriers cannot be upheld.

**B. The Commission lacks authority to establish a minimum local usage requirement.**

The Commission is without jurisdiction or authority to condition Dobson's designation on a minimum local usage requirement. The ALJ erroneously assumes such power to create the condition based on the recommendations of the Joint Board. ALJ Report, p. 24.<sup>5</sup> Of course, the Joint Board's recommendations are just that – they have no force and effect unless formally adopted by the FCC and thus provide no authority for the Commission to establish any minimum local usage requirement for a federal ETC.

Indeed, the legislative history makes clear that until the FCC acts to adopt or decline a recommended decision, the Joint Board's recommendations are merely advisory. Senate Report No. 104-23, p. 25 (March 30, 1995) ("[T]he recommendations of the Joint Board are advisory in nature, and the FCC is not required to adopt the recommendations.") (emphasis added). Pursuant to 47 U.S.C. § 254(a)(2), the FCC has up to one year in which to act on the recommendations.<sup>6</sup> Thus, it is certainly premature to seize upon any Joint Board suggestions as grounds for announcing new wireless ETC standards. Therefore, the Commission has no authority to proclaim this arbitrary condition and, accordingly, the ALJ's fourth condition must be rejected.

**C. The ALJ's proposed local usage condition is contrary to the FCC's *Virginia Cellular* decision**

The ALJ's proposed local usage condition should be rejected as contrary to the FCC's determinations. In fact, the ALJ ignores the very FCC guidance purportedly relied on in the ALJ

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<sup>5</sup> Citing *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Recommended Decision*, FCC 04J-1, ¶ 56 (rel. Feb. 27, 2004).

<sup>6</sup> The FCC issued its Notice of Proposed Rulemaking earlier this month. *In the Matter of the Federal-State Joint Board on Universal Service*, CC Docket 96-45, *Notice of Proposed Rulemaking*, FCC 04-127 (rel. June 8, 2004).

Report itself -- the *Virginia Cellular* decision. In *Virginia Cellular*, the FCC expressly concluded:

ETCs should provide some minimum amount of local usage as part of their "basic service" package of supported services. *Virginia Cellular* states that it will comply with any and all minimum local usage requirements adopted by the FCC. It adds that it will meet the local usage requirement by including a variety of local usage plans as part of a universal service offering.

*Virginia Cellular*, ¶ 20. In reviewing the FCC's governing standards for local usage, the ALJ recognizes that the FCC accepted *Virginia Cellular's* commitment to provide a variety of local usage plans and to comply with any minimum standard ultimately adopted by the FCC. ALJ Report, pp. 23-24. The ALJ also recounted and confirmed the FCC's acceptance of these commitments. ALJ Report, pp. 23-24. The ALJ in fact notes that the *Virginia Cellular* decision "should be considered by the Oklahoma Commission in determining whether to grant ETC status to Dobson."

Despite this apparent acknowledgment of the FCC's determinations, the ALJ then ignores the federal law and instead seeks to impose an arbitrary 1,000-minute minimum requirement. There was and is no basis whatsoever for such a condition. Nowhere in *Virginia Cellular* does the FCC establish any specific local usage requirement. The fact is that Dobson satisfies the FCC's requirement to provide varying amounts of local usage in all service offerings, as applied by the FCC in *Virginia Cellular* and recognized by the ALJ herself. The minimum local usage condition of the ALJ Report accordingly must be rejected by the Commission.

D. The local usage condition is contrary to the FCC's Rule governing local usage as a supported service.

The ALJ's proposed local usage requirement should be rejected as contrary to the FCC's well-settled local usage standards. The FCC has expressly determined not to establish any specific minimum local usage requirement. The plain language of the FCC's rule does not

prescribe any minimum amount of local usage as a supported service. The FCC, in fact, has a docket pending to consider the amount of local usage, if any, to be required of all federal ETCs.<sup>7</sup> Consequently, the ALJ's recommendation that the Commission establish 1,000-minute local usage condition contravenes federal law.

(1) Federal Law Requires Only That Some Amount of Local Usage Be Provided Free of Charge.

An ETC must include "local usage" in its service offerings as part of its obligation to provide the supported services. The plain language of the FCC's rule defines "local usage" as "an amount of minutes of use of exchange service, prescribed by the [FCC], provided free of charge to end users."<sup>8</sup> Each of Dobson's service offerings meets this requirement by including varying amounts of local usage. (Exhibit 13, p. 10; TC-1.) Moreover, the FCC committed itself to determine what amount of local usage should be required of a federal ETC through a separate rulemaking.<sup>9</sup> The FCC confirmed in the *Universal Service Order* that it would determine the level of local usage to be supported by federal universal service mechanisms, while the States only have responsibility "to determine the local usage component for purposes of state universal service mechanisms."<sup>10</sup>

To date, the FCC has not quantified any minimum amount of local usage required to be included in a service offering for any federal ETC. Rather, it has pending a rulemaking proceeding for purposes of considering this issue.<sup>11</sup> The nature of these issues make clear that

<sup>7</sup> *In the Matter of Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 98-278 (rel. Oct. 26, 1998) ("October 1998 NPRM").

<sup>8</sup> 47 C.F.R. § 54.101(a)(2) (emphasis added).

<sup>9</sup> *Universal Service Order*, ¶ 65.

<sup>10</sup> *Id.*

<sup>11</sup> October 1998 NPRM.



any such determination must be made on a federal level rather than established by a State Commission in the context of an ETC designation proceeding. Therefore, it would be unlawful for the Commission to impose a minimum local usage requirement for Dobson contrary to the FCC's required service.

Any condition imposed on Dobson for 1,000-minute minimum amount of local usage would also violate the FCC's requirement of competitive and technological neutrality. The FCC's comments in the *October 1998 NPRM* shed light on the highly complex technical and policy issues involved in establishing any such local usage standard. The FCC began by declaring that the principle of competitive neutrality requires it to recognize "[d]ifferent technologies have different cost and rate structures, and, in particular, wireline and wireless carriers will be affected differently by the level of flat-rated local usage that a carrier must provide in order to be eligible to receive universal service support."<sup>12</sup> The FCC expressly noted that landline providers incur their most substantial costs in installing a dedicated transmission line (local loop) between the customer and the telephone company central office.<sup>13</sup> Thus, providing any amount of local usage, even unlimited local usage, is not a cost concern for landline carriers. "Once the loop is installed and activated, however, the incremental cost of using it for additional calls beyond the first is relatively insignificant."<sup>14</sup>

Conversely, the FCC noted that wireless providers incur only a small portion of their overall expenses through such dedicated costs. The FCC recognized "[t]he largest portion of the cost of providing mobile wireless service appears to be the cost of shared facilities, such as

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<sup>12</sup> *Id.*, ¶ 47.

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

towers."<sup>15</sup> As a result, the FCC concluded that the establishment of any minimum "local usage requirement has the potential to affect different types of carriers differently. Setting an unreasonably high or low level of local usage can significantly affect competition among different technologies."<sup>16</sup>

In addition to competitive neutrality concerns, the FCC has identified other significant implications in establishing any minimum amount of local usage to be required of an ETC. First, the FCC sought comments on "how to define a basic service package with a local usage requirement that presents a realistic option to wireless customers."<sup>17</sup> It noted that it would be meaningless to impose a local usage requirement that would require wireless carriers to price the service at hundreds of dollars over other service plans offered by it or its competitors to meet the requirement.<sup>18</sup> Second, the FCC sought comment on whether the local usage requirement should be measured by a fixed number of minutes of use per month or by requiring some minimum number of calls.<sup>19</sup> This question necessarily must take into account the fact that different types of carriers incur different costs based on a call's duration or the time of day it is made. Lastly, but perhaps most importantly, the FCC sought comment on how to determine precisely what constitutes "local" for purposes of local usage.<sup>20</sup> This question takes on added importance because wireless and landline carriers define "local" calls differently.<sup>21</sup> As the FCC noted:

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.*, ¶ 49.

<sup>17</sup> *Id.*, ¶ 50.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*, ¶ 51.

<sup>20</sup> *Id.*, ¶ 53.

<sup>21</sup> *Id.*

The boundaries of the local calling areas for wireline carriers and service areas for eligible telecommunications carriers are set by the states, and the value of a particular local usage requirement will depend in part on the size of the area encompassed by the local calling area, which may vary from state to state.<sup>22</sup>

Thus, it is vital in assessing any local usage requirement to first define the parameters for making such a determination.

The complexity of these issues and their significance to federal universal service funding highlight the need for the FCC to establish any minimum amount of local usage as a supported service to be required of a federal ETC. The matter of local usage is still pending before the FCC. Since the FCC has not yet completed its proceedings, it is entirely improper for the Commission to attempt to prejudge the outcome in the context of an ETC designation proceeding. The complexities of resolving the issue in a competitively neutral manner run deep. In any event, it is the FCC who will ultimately make such a determination. Accordingly, the ALJ's fourth condition should be rejected.

(2) Neither the FCC Nor Any Other State Commission Has Sought to Prescribe a Minimum Amount of Local Usage in the Context of ETC Designations.

The FCC and numerous State commissions have acted on many occasions to designate wireless carriers as federal ETCs without seeking to establish any minimum usage statement. At no time has the FCC ever imposed any minimum amount of local usage as a predicate to granting ETC designation. Rather, the FCC has consistently designated wireless ETCs based on the provision of varying amounts of local usage as part of the service offerings.<sup>23</sup> Dobson meets

<sup>22</sup> *Id.*

<sup>23</sup> See, e.g., *In the Matter of Federal-State Joint Board on Universal Service Cellular South License, Inc., Petition for Designation as an Eligible Telecommunications Carrier throughout its Licensed Service Area in the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 02-3317, ¶ 19 (rel. Dec. 4, 2002) ("Cellular South Order") ("We find sufficient Cellular South's showing that it will offer minimum local usage as part of its universal service offering."); *In the Matter of Federal-State Joint Board on Universal Service ROC Holdings, Inc. Petition for Designation in the State of Alabama*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 02-

this standard. Likewise, numerous State commissions have also designated wireless carriers as federal ETCs, and at no time have they ever sought to impose a minimum amount of local usage as a predicate to ETC designation.<sup>24</sup> In fact, this Commission did not impose any minimum amount of local usage on Western Wireless as part of its ETC designation. Rather, the Commission correctly determined that Western Wireless provides "local usage" as a supported service consistent with the FCC's requirement.<sup>25</sup>

The absence of any State commission or the FCC acting to impose any minimum local usage requirement is due to two clear constraints. First, Section 214(e) of the Act makes clear that a State commission's authority is limited to designating carriers as federal ETCs when they demonstrate satisfaction of the requirements of Section 214(e)(1) and the FCC's regulations.<sup>26</sup> A State commission's authority does not extend to creating or modifying the federal universal service requirements, developing the specific plan components, like minimum local usage, or determining federal universal funding matters. Second, the FCC has made clear that any minimum local usage requirement applicable to all federal ETCs will be established at the

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3181, ¶ 19 (rel. Nov. 27, 2002) ("RCC Order") (same); *In the Matter of Federal-State Joint Board on Universal Service Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, CC Docket No. 96-45, Memorandum Opinion and Order, DA 00-2896, ¶ 10 (rel. Dec. 26, 2000) ("Western Wireless Wyoming Order") (approving Western Wireless' offers of varying amounts of local usage).

<sup>24</sup> See, e.g., *In the Matter of the Petition of Midwest Wireless Communications, LLC, for Designation as an Eligible Telecommunications Carrier (ETC) Under 47 U.S.C. § 214(e)(2)*, MPUC Docket No. FT-6153/AM-02-686, Order Granting Conditional Approval and Requiring Further Filings, p. 5 (Mar. 19, 2003) (Minnesota); *In the Matter of Application of Smith Bagley, Inc. for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. § 214(e)(2) and A.C.C. § 14-2-1203*, Docket No. T-02556A-99-0207, Order, Decision No. 63269, ¶ 22 (Dec. 15, 2003) (Arizona); *In re: WPC License LLC, d/b/a Cellular One*, Docket No. 199 IAC 39.2(4), Order Granting Request for Eligible Telecommunications Carrier Status, pp. 6, 10 (Nov. 21, 2000) (Iowa).

<sup>25</sup> *Western Wireless Oklahoma Order*, p. 15-16.

<sup>26</sup> 47 U.S.C. § 214(e); 47 C.F.R. § 54.201.

federal level on a uniform basis, not by individual State commissions.<sup>27</sup> The FCC's requested comments in the *October 1998 NPRM* make clear why such a determination must be made on the federal level.

(3) Dobson Complies with the FCC's Local Usage Requirements.

Dobson's Application establishes, and the record and Stipulation confirm, that Dobson complies with the local usage requirement necessary for federal ETC designation. Dobson will include local usage in each of its service offerings. (Exhibit 14, ¶ 13; Exhibit 13, p. 10.) A partial listing of Dobson's Oklahoma calling plans is included in Exhibit 13, TC-1. In addition to providing each of the FCC's required services, Dobson provides wide-ranging amounts of local usage in each of these plans. (*Id.*) Dobson has also committed itself to complying with any minimum local usage requirement ultimately ordered by the FCC and required of all federal ETCs. (Exhibit 13, p. 10.)

Accordingly, the Commission should conclude Dobson's service offerings comply with all federal requirements, including local usage as a supported service. It would be entirely improper and unlawful for the Commission to accept the ALJ's recommended 1,000-minute minimum local usage service requirement as a predicate to Dobson's designation. Ultimately, the FCC will establish any minimum amount of local usage required by all federal ETCs.

**Exception 4: The ALJ erred by imposing the unlawful condition that Dobson somehow agree to accept carrier of last resort obligations. The ALJ's fifth condition should be rejected by the Commission.**

The Commission should reject the ALJ's recommendation to require that Dobson submit to being a COLR throughout its designated ETC service areas. ALJ Report, p. 27. There is no

<sup>27</sup> *Universal Service Order*, ¶ 66 ("We have the authority to support a certain portion of local usage, pursuant to the universal service principles."); ¶ 67 ("Consumers might not receive the benefits of universal service support unless we determine a minimum amount of local usage that must be included within the supported services.") (emphasis added).

discussion, let alone factual support in the record, for the ALJ's recommendation. Furthermore, the ALJ's condition is not a requirement for Dobson to be designated as an ETC, and constitutes prohibited rate and entry regulation of a CMRS provider under federal law.

COLR responsibility has long been used by State commissions to control market entry and exit in State wireline telecommunications markets. This is reflected in Commission Rule 165:55-13-12 which strictly regulates: 1) where a COLR must provide service; 2) where and when a COLR must build out its network; and 3) how a COLR can recover build-out costs from its customers. OAC 165:55-13-12. However, the Commission's COLR rules only apply to LECs regulated by the Commission. "Carrier of last resort" means a telecommunications service provider . . . .," and "telecommunications service provider," in turn, is defined in as a "company holding a certificate of convenience and necessity from the Commission to provide local exchange telecommunications service." OAC 165:55-1-4 (emphasis added). A CMRS provider like Dobson is not within the scope of OAC 165:59-1-4.

Notwithstanding this limit on COLR status under the Commission's rules, the ALJ recommends conditioning Dobson's ETC designation on its acceptance of regulation as a COLR in the designated areas. ALJ Report, p. 27. As discussed below, this condition must be rejected by the Commission as contrary to law.

**A. COLR Status is Not a Requirement to Designate a CMRS Provider as an ETC**

The law is clear that Dobson's designation as a COLR is not a requirement for designation as a federal ETC. The FCC specifically addressed this issue in its *Universal Service Order*:

Several commenters maintain that, in order to create an equitable and sustainable federal universal service system and to prevent competitive carriers from attracting only those customers that order the most profitable services, the [FCC] must subject all eligible carriers to the regulatory requirements that govern ILECs,

including pricing, marketing, service provisioning, and service quality requirements, as well as carrier of last resort (COLR) obligations. We reject proposals to impose these additional obligations as a condition of being designated an [ETC] pursuant to section 214(e) . . . .

*Universal Service Order*, ¶ 142 (emphasis added) (footnotes omitted). The FCC reasoned that the imposition of COLR status was "unnecessary," "incompatible with the requirements of section 214(e)(1)," and would "discourage competition." *Id.* ¶ 143. The FCC further found that the obligation of a common carrier, and the barriers to exit contained in Section 214(e)(4) are sufficient to protect consumers and further the purposes of the Act. *Id.*

As a result, the ALJ erred by seeking to condition Dobson's ETC designation on acceptance of COLR responsibility. COLR responsibility is not a lawful requirement under federal law for Dobson's designation as an ETC.

**B. The Imposition of COLR Status on Dobson is Preempted as to a CMRS Provider.**

Not only is COLR status expressly excluded from the prerequisites to ETC designation, but such a condition is also prohibited by federal law. Congress has preempted States from regulating the entry of and rates charged by CMRS providers. 47 U.S.C. § 332(c)(3)(A). In passing Section 332(c)(3), Congress established the FCC as solely responsible "for determining the number, placement and operation of the cellular towers and other infrastructures of the CMRS network."<sup>28</sup> By seeking to impose a COLR obligation on Dobson, the ALJ seeks to exercise State law jurisdiction over Dobson's entry into and exit from the market, how its network is constructed, and where it provides service. Nothing in federal law allows the Commission to go beyond the Act's requirements or to impose traditional State law jurisdiction over Dobson's market entry that is plainly prohibited by Section 332(c)(3)(A).

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<sup>28</sup> *Bostian v. AT&T Wireless Services, Inc.*, 205 P.3d 983, 989 (7th Cir. 2000)

Any imposition of COLR status on Dobson also constitutes impermissible rate regulation preempted by 47 U.S.C. § 332(c)(3)(A). A COLR under Oklahoma law is strictly regulated as to how it may recover network build-out costs from customers. OAC 165:55-13-12. By seeking to take control over the rates charged by Dobson, the recommended COLR condition violates Section 332(c)(3)(A). Because Congress has preempted the States from regulating the rates charged for Dobson's services, the Commission cannot impose a COLR condition consistent with federal law.

**C. The Commission's Wireless ETC Rules already provide for COLR-like obligations.**

The ALJ's COLR condition should be rejected as unnecessary under the Wireless ETC Rules and the Stipulation. Like the COLR provisions of OAC 165:13-12, the Commission's Wireless ETC Rules already seek to make telecommunications services available to all who so desire. OAC 165:55-23-13, entitled "Extension of Facilities," expressly sets forth the mechanisms by which a wireless ETC like Dobson would be required to respond to a reasonable request for service. Among the obligations imposed upon Dobson under the Wireless ETC Rules are the following:

First, Dobson must determine whether the customer's equipment can be modified or replaced to provide service in a desired location.

Second, Dobson must determine whether the customer could be provided with other network equipment to provide service in the requested location.

Third, Dobson must determine whether adjustments at the nearest cell site can be made to provide service.

Fourth, Dobson must determine whether there are any other adjustments to either the network or the customer facilities that can be made to provide service.

Fifth, Dobson must explore the possibility of offering resold service of carriers that have facilities available to provide service in that location.



Sixth, Dobson must determine whether additional network infrastructure (additional cell site, extender or repeater) could be constructed to provide service, and evaluate the costs and benefits of using high-cost universal service support to serve a number of customers requesting service.

OAC 165:55-23-13.

In addition to the COLR-like service requirements under the Wireless ETC Rules, Dobson has also agreed under the Stipulation to respond to reasonable requests for service as follows:

If Dobson determines that it cannot provide service within its designated service areas, Dobson is required to extend its network to serve new customers upon reasonable request. Dobson may seek a waiver of such requirement from the Commission, and upon notice and hearing, the Commission shall determine if such waiver shall be granted. Upon the filing of an Application for Waiver, Dobson shall provide a copy of the Application filed with the Commission to the rural telephone company ("RTC") in whose service territory the waiver is sought.

Stipulation, ¶ 1. Thus, under both the Wireless ETC Rules and the Stipulation, Dobson is already obligated to take reasonable steps toward making telecommunications services available to all within its designated service area. Therefore, the ALJ's proposed COLR obligations under the fifth condition is unnecessary and should be rejected by the Commission.

**Exception 5: The ALJ erred by declaring that Dobson cannot be designated as an ETC in rural telephone company service areas unless certain "public interest" conditions are met. The ALJ's recommended condition must be rejected by the Commission.**

The Commission should reject the ALJ's additional conditions recommended under the guise of the public interest determination. Foremost among these is the proclamation that Dobson cannot be designated in any rural telephone company service area unless another wireless carrier is also designated as an ETC in that same area. ALJ Report, p. 28. This and other so-called "public interest" conditions cannot be accepted by the Commission. Such conditions are internally inconsistent, lack any factual or legal support, and are contrary to federal law, the Wireless ETC Rules and the parties' Stipulation in this proceeding.

**A. The ALJ's requirement of multiple wireless ETCs in every area in which Dobson seeks designation is internally inconsistent**

The ALJ notes that United States Cellular Corporation filed for ETC status in three rural telephone company areas which are also subject to Dobson's Application, namely, Beggs Telephone, Canadian Valley Telephone, and Oklahoma Telephone & Telegraph. ALJ Report, pp. 27-28. From this mere factual recognition, the ALJ leaps to the unsupported conclusion that Dobson cannot be designated in any of the five rural telephone company areas unless the Commission concurrently grants designation to another wireless carrier in the same areas. ALJ Report, p. 28. The ALJ Report is thus internally inconsistent because it relies on three common requested designated areas between the Company and United States Cellular, but then concludes that not only can Dobson not be designated as an ETC in those three areas unless United States Cellular is also designated in these areas, but Dobson cannot be designated in any of the other two service areas unless another wireless carrier is also designated there.

This "one size fits all" standard is also inconsistent with the ALJ Report. The ALJ sets forth four (4) guiding public interest principles based on the "ever growing size of the federal universal service fund." ALJ Report, p. 21. The ALJ's obvious implication is that the public interest should be a check on limiting the number of designated ETCs. But the ALJ's proposed condition would do nothing to limit the number of ETCs. To the contrary, the ALJ seeks to require at least two, and ultimately an unlimited number, of wireless ETCs for every rural telephone company service area in Oklahoma. Thus, under the ALJ's own reasoning, it cannot be in the public interest to require multiple wireless ETCs in every service area. Compounding matters, the ALJ also requires that this unknown wireless carrier also submit to the same unlawful conditions set forth in the ALJ Report. *Id.* This alleged "public interest" standard is

unworkable and irreconcilable with the ALJ's reasoning. It cannot be in the public interest to adopt it as such.

The ALJ's public interest condition to require multiple, competitive ETCs is also lacking in any factual support. There is nothing in the record even suggesting that multiple wireless ETC designations are necessary to protect the public interest. Nor is there anything suggesting that multiple wireless ETC applications are pending in all areas in which Dobson seeks designation. Instead, the ALJ simply relies on the coincidence that United States Cellular is also seeking designation in three areas identified in Dobson's request. There simply is no factual justification for the ALJ's declaration that at least two wireless carriers must be designated or no wireless carrier can be designated.

**B. The ALJ's multiple wireless ETC condition lacks legal support**

There is no precedent in federal or State law for requiring multiple wireless ETC designations as a condition of a single designation. The FCC has never once taken this position. To the contrary, the FCC has granted numerous applications for ETC designation when the applicant would be the only wireless ETC in the service area.<sup>29</sup>

Moreover, this Commission recently finished its consideration of the circumstances in which a wireless carrier should be designated as an ETC in the State of Oklahoma. See OAC 165:55-23-1, *et seq.* Nowhere in the Commission's Wireless ETC Rules is there any requirement to prohibit a wireless carrier from being designated as an ETC in any service area unless there would be at least two wireless ETCs in the service area. The Commission has set the State standards for wireless ETC designation, and the ALJ's condition is nowhere to be found.

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<sup>29</sup> See, e.g., *Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia*, CC Docket No. 96-45, Memorandum Opinion and Order, FCC 04-37 (rel. Apr. 12, 2004); *Virginia Cellular, Cellular South Order*; *RCC Order*; *Western Wireless Wyoming Order*.

Finally, the Stipulation reached by all parties in this action makes no mention of requiring multiple wireless ETCs in a given service area. Thus, the rural ILECs that would have the greatest interest in erecting barriers to Dobson's ETC designation found no need to demand a requirement like that proposed by the ALJ. Instead, the parties have carefully considered the circumstances in which a wireless ETC should be granted ETC designation and have determined that Dobson satisfied all requirements.

Therefore, the ALJ's proposed condition is internally inconsistent and wholly lacking in factual and legal support. Additionally, it is contrary to the Stipulation reached by all parties in this case. Therefore, Commission should reject the condition.

**C. The ALJ's other proposed public interest conditions lack factual support**

The Commission should reject the ALJ's other proposed conditions as having no basis in the record. For instance, the ALJ states that Dobson cannot provide a universal service plan priced for \$59.99 per month. ALJ Report, p. 23. The ALJ made this determination without any facts suggesting that such a plan cannot qualify for universal service support. Rather, the ALJ simply believed that such a plan would not be "comparable to the basic local service available in the non-rural areas of the State." ALJ Report, p. 23.

In that same vein, the ALJ recommends that Dobson be required to offer service plans "for a price that is not more than 10 percent above the highest local exchange rate charged to residential customers in the State of Oklahoma by any ILEC or CLEC." ALJ Report, p. 27. Again, there is no record evidence whatsoever upon which to base such a requirement. This particular provision further constitutes unlawful regulation of Dobson's rates. 47 U.S.C. § 332(c)(3)(A).

In addition to being arbitrary and capricious because they lack any evidentiary basis, the ALJ's conditions fail to take into the account the differences between wired and wireless service,

Wireless service is available everywhere. It can be used to call 911 from the highways and other places where there is no wired service. Wireless provides wide area calling plans and reduced or no long distance charges, as well as "national" plans that can be used anywhere in the country. The minutes or dollars seized on by the ALJ to justify the conditions imposed equate mobile wireless telephone service with tethered wired telephone service, ignoring their considerable differences. This results in proposed conditions that are simply irrational, as well as having no foundation.

Accordingly, the ALJ's proposed public interest requirements are arbitrary and capricious and therefore must be rejected by the Commission.

**D. Dobson's ETC Designation in areas served by the rural ILECs is in the public interest**

Applying the FCC's guiding principles will lead this Commission to grant Dobson's Application consistent with the public interest. The FCC has concluded that the public interest is served when rural consumers are provided the benefits of competitive universal services. In the absence of empirical evidence that rural consumers will be harmed, or evidence that a specific rural telephone company study area cannot support competitive universal service, the FCC has concluded an ETC application should be granted consistent with the public interest.<sup>30</sup> This result is fully consistent with the stated purposes of the Act, namely, "To promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Pub. L. No. 104-104, 110 Stat. 56 (1996) (emphasis added).

In fact, the Commission has previously determined that designating a CMRS provider as an additional ETC in rural study areas is in the public interest. The Commission noted:

<sup>30</sup> See *Western Wireless Wyoming Order*, ¶16; see also *RCC Order*, ¶¶ 23-26.

[s]uch designation will provide greater customer choice and the benefits of competition to consumers within ... rural study areas by adding an additional universal service provider in such areas. Such choice and competition benefits will bring new telecommunications technologies in rural areas of the State and should lead to better service for Oklahoma's rural customers.<sup>31</sup>

Thus, the public interest analysis of both the FCC and the Commission is driven by whether designating any additional ETC will facilitate the benefits of competition, including greater consumer choice and promotion of new telecommunications technologies.

(1) Granting ETC designation will facilitate competition to the benefit of rural consumers.

Dobson's ETC designation will facilitate competition that will benefit rural consumers consistent with the public interest. Competition by Dobson is in the public interest because of the general benefits that it brings to rural consumers. Granting ETC status to Dobson will allow rural consumers a choice of providers for their telecommunications needs. (Exhibit 1, ¶ 22; Exhibit 13, p. 16.) This benefit of choice will include varying amounts of local usage in Dobson's service offerings. The FCC and Commission have already recognized the benefits of providing greater choices to customers.<sup>32</sup> By designating Dobson, the Commission will continue to further this important policy of allowing consumers to choose basic service by determining which carrier provides the most advantageous pricing, services, service quality, customer service and service availability. (Exhibit 1, ¶ 22; Exhibit 13, p. 17.) Increased competition will also create incentives for all competing carriers to improve their respective networks, operate more

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<sup>31</sup> *Application of GCC License Corporation for Certification as an Eligible Telecommunications Carrier Pursuant to the Telecommunications Act of 1996*, Cause No. PUD 98000470, Final Order Approving GCC License Corporation as an Eligible Telecommunications Carrier, Order No. 450765, ¶ 19 (April 11, 2001) ("Western Wireless Oklahoma Order").

<sup>32</sup> RCC Order, ¶ 23; *Western Wireless Oklahoma Order*, ¶19.

efficiently and improve customer service, all of which the Commission has found will benefit consumers and promote universal service. (Exhibit 1, ¶ 26; Exhibit 13, p. 17.)<sup>33</sup>

The public interest is also served by the specific benefits to rural customers that will be provided by Dobson. As an ETC, Dobson will provide services not otherwise available from the landline LECs. For example, current service offerings by incumbent LECs have restricted local calling areas and are bound by the limitations of landline technology. Dobson will provide larger local calling areas, which will be of great benefit to rural consumers who currently have to pay toll charges to reach some local government offices, health care providers, businesses or family outside of a restricted landline calling area. (Exhibit 1, ¶ 23; Exhibit 13, p. 18.)<sup>34</sup> Dobson's service will also provide the benefits of mobility and the ability to call 911 from highways and other locations where wired service is non-existent. (Exhibit 1, ¶ 23; Exhibit 13, p. 18.) This mobility component is a feature valued by Dobson's rural consumers where the distance between phones is much greater than in urban areas.

The Commission has previously acknowledged that facilitating the "rapid deployment of new technologies in rural areas of the State [] should lead to better service for Oklahoma's rural customers."<sup>35</sup> Dobson's ETC designation will continue to promote the deployment of wireless technologies throughout Oklahoma by allowing the Company to continue to enhance and expand its network infrastructure. (Exhibit 1, ¶ 25; Exhibit 13, p. 18.) Access to universal service funding will allow Dobson to continue to extend its network throughout the State, and this

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<sup>33</sup> *Id.*

<sup>34</sup> *RCC Order*, ¶ 24.

<sup>35</sup> *Id.*

network infrastructure will continue to be available to provide universal and advanced services to rural consumers in Oklahoma.

Accordingly, the Commission should find that designation of Dobson as an additional ETC in rural areas is consistent with the public interest.

- (2) No record evidence demonstrates that rural consumers will be harmed by Dobson's ETC designation.

The Commission should similarly find there is no reason to believe consumers will be adversely affected by Dobson's ETC designation. There is no evidence in the record that Dobson's designation will lead to any anticompetitive results. Indeed, the parties' Stipulation confirms that Dobson's ETC designation will serve, not subvert, the Act's pro-competitive design for universal service. Thus, upon a proper review of the record, the Commission should find that Dobson's ETC designation is in the public interest.

Consistent with these guiding principles and the parties' Stipulation, the Commission should conclude that the goals of the Act and the interests of the public will be promoted by granting ETC designation to Dobson. Oklahoma's rural consumers will certainly realize the benefits of competition through increased choices. Granting the designation will also further the deployment of new telecommunications services to the benefit of Oklahoma's rural consumers. The Stipulation reached between Dobson and all the parties, including the rural ILECs themselves, confirms that the public interest would be served by Dobson's designation as an ETC. The ALJ's Report notwithstanding, the Commission should approve Dobson's Application consistent with the public interest.

#### **IV. CONCLUSION**

Federal law and the Wireless ETC Rules establish clear standards for allowing a wireless provider to be designated as an ETC for purposes of federal universal service support. Dobson



has demonstrated it provides the supported services, satisfies all statutory requirements, and can and will meet the obligations of an ETC. For rural consumers, the designation will bring new technology, lower rates, and better service, consistent with the public interest.

The Commission must follow the law as mandated by the Act, FCC rules and orders, and its own rules. If it does so, the Commission should grant Dobson's Application. Dobson respectfully requests the Commission reject the conditions of the ALF's Report and approve Dobson's Application consistent with law subject only to the conditions in the Stipulation and the Wireless ETC Rules.

Dobson submits a proposed Final Order of the Commission, attached as Exhibit A, granting it ETC designation.

Respectfully submitted,

Dated: July 16, 2004

By MARC EDWARDS  
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**ATTORNEYS FOR DOBSON CELLULAR  
SYSTEMS, INC.**

**CERTIFICATE OF MAILING**

This is to certify that on the 16<sup>th</sup> day of July, 2004, a true and correct copy of the foregoing instrument was mailed, postage prepaid, to the following:

Ron Comingdeer  
Comingdeer, Lee & Gooch  
6011 N Robinson  
Oklahoma City, OK 73118-7423

Kim Brown  
Williams, Box, Forshee & Bullard, P.C.  
522 Colcord Drive  
Oklahoma City, OK 73102-2202

David Dykeman  
Assistant General Counsel  
Oklahoma Corporation Commission  
400 Jim Thorpe Building  
P.O. Box 52000-2000  
Oklahoma City, Oklahoma 73152-2000

Marc Edwards

BEFORE THE CORPORATION COMMISSION OF THE STATE OF OKLAHOMA

APPLICATION OF DOBSON CELLULAR )  
SYSTEMS, INC. FOR DESIGNATION AS AN ) CAUSE NO. PUD 200300239  
ELIGIBLE TELECOMMUNICATIONS )  
CARRIER PURSUANT TO THE ) ORDER NO. \_\_\_\_\_  
TELECOMMUNICATIONS ACT OF 1996 )

HEARING: August 10, 2004  
Before the Commission en banc

APPEARANCES: Marc Edwards and Mark J. Ayotte, Attorneys for Dobson Cellular  
Systems, Inc.  
Ron Comingdeer, Attorney for Beggs Telephone Company,  
Canadian Valley Telephone Company, Carnegie Telephone  
Company and Oklahoma Telephone & Telegraph, Inc.  
Kim Brown, Attorney for Totah Telephone Company, Inc.,  
Chouteau Telephone Company, Inc., and Pine Telephone  
Company, Inc.  
David Dykeman, Deputy General Counsel, Public Utility Division,  
Oklahoma Corporation Commission,

**FENAL ORDER**

**By the Commission:**

The Oklahoma Corporation Commission being regularly in session and the undersigned Commissioners being present and participating, regarding the appeal and exceptions to the Report of the Administrative Law Judge issued July 7, 2004.

Dobson Cellular Systems, Inc. ("Dobson") filed an application in the above styled Cause on May 2, 2003, seeking designation as an Eligible Telecommunications Carrier ("ETC") within the service areas of Southwestern Bell Telephone Company and Valor Telephone Company. Additionally, Dobson seeks designation as an ETC within the service areas of 5 Rural Telephone Companies ("Rural Telephone Companies"): Beggs Telephone Company, Canadian Valley Telephone Company, Carnegie Telephone Company, Dobson Telephone Company and Oklahoma Telephone & Telegraph, Inc.

**Findings of Fact and Conclusions of Law**

The Commission having considered the recommendation of the Administrative Law Judge, the record in this cause and the argument of counsel, finds as follows:

The Commission finds that it has jurisdiction in the Cause pursuant to Section 214 of the Telecommunications Act of 1996.



The Commission further finds that notice was properly given pursuant to the law and the commission's rules.

The Commission further finds that the procedural history and summary of evidence are, hereby, adopted as the procedural history and summary of evidence of the Commission. The Commission rejects and declines to adopt the general background and findings of fact and conclusions of law set forth in the report of the Administrative Law Judge.

The Commission further finds that the recommendation of the Administrative Law Judge that the Commission grant to Dobson ETC status within the requested wire centers served by SBC Oklahoma and Valor is hereby adopted as the findings of the Commission.

The Commission further finds that the remaining recommendations set forth in the report of the Administrative Law Judge are rejected and are not adopted as the findings of the Commission.

The Commission further finds that Dobson is granted ETC designation in the study areas of the Rural Telephone Companies, subject to:

1. The requirements set forth in the Stipulation dated November 19, 2003, and filed herein on December 4, 2003, and
2. The ETC Wireless Rules set out in OAC 165:53-23-1, et seq.

**ORDER**

IT IS, THEREFORE, THE ORDER of the Corporation Commission of the State of Oklahoma that the above Findings of Fact and Conclusions of Law, are, hereby, the Order of the Commission.

OKLAHOMA CORPORATION COMMISSION

\_\_\_\_\_  
DENISE BODE, Chair

\_\_\_\_\_  
BOB ANTHONY, Vice-Chair

\_\_\_\_\_  
JEFF CLOUD, Commissioner

DONE AND PERFORMED this \_\_\_\_ day of August, 2004, by Order of the  
Commission:

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PEGGY MITCHELL, Secretary

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**EXHIBIT B**

**The Oklahoma Corporation Commission's September 28, 2004 Letter Certifying Dobson's  
Use of Universal Service Support for the 2005 Calendar Year**

RD ANTHONY  
COMMISSIONER

DEBRA J. BROWN  
COMMISSIONER

JEFF CLOUD  
COMMISSIONER

# OKLAHOMA CORPORATION COMMISSION

Jim Thorpe Office Bldg., Suite 650  
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**JOYCE E. DAVIDSON, DIRECTOR**  
**PUBLIC UTILITY DIVISION**

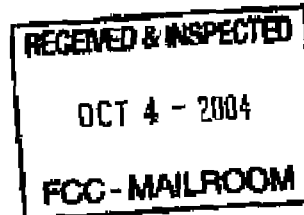
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September 28, 2004

DOCKET FILE COPY ORIGINAL



Martene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW, Room TW-A908  
Washington, D.C. 20554

Re: CC Docket No. 98-45 State Certification of Universal Service support  
pursuant to 47 CFR §54.314; 47 USC 254 (e)

To the Filing Representatives,

Pursuant to 47 CFR § 54.314 (d) the Oklahoma Corporation Commission (OCC) submits this certification in support of the universal service funds received for the telephone companies operating under its jurisdiction. A complete listing of those companies for which 47 CFR §54.314 (d) applies is contained in Attachment B. *(Please See Revised List of 9/29/04)*

The OCC has received affidavits provided by a corporate officer from each such rural carrier operating in Oklahoma, that includes a sworn statement that the federal high-cost support received has been or will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. The OCC also required and received additional documentation pertaining to company's operational and capital expenditures, and federal high-cost support received for Year 2003. Beyond those procedures, the OCC has not undertaken any other procedure to assure that the support received has been used for only its intended purposes.

Our certification herein does not preclude us from reviewing in further detail how any rural carrier has employed its federal universal service funds, and requiring that use of funds comply with directives or policies we may set. Our certification is based on the best data available as of September 24, 2004. Our decision herein does not bind us in pending or future cases and we reserve the right to

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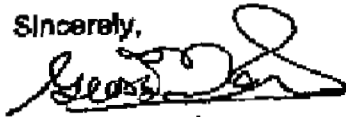
EXCELLENCE IS OUR STANDARD

conclude that a company should employ its universal service funding differently than it does today, or in the future, based on new data or after a more detailed review.

Please acknowledge receipt of this filing by date stamping the extra copy of this letter, and returning it to us in the self-addressed, stamped envelope.

If you have any questions, please contact Malini Gandhi, CPA/Manager of AFA, at (405) 521-6888 or e-mail her at [m.gandhi@occemail.com](mailto:m.gandhi@occemail.com).

Sincerely,

  
FDV

Joyce Davidson  
Director  
Public Utility Division  
Oklahoma Corporation Commission

Enc.  
By Certified Mail



Revised Attachment "B"

RURAL ILEC's

Oklahoma Corporation Commission	USF State Certification	
COMPANY NAME	STUDY AREA CODE	TYPE
ALLTEL Oklahoma, Inc.	431985	C
Adas Telephone Company	431988	C
Beggs Telephone Company	431988	A
Bibby Telephone Company	431988	C
Canadian Valley Telephone Company	431874	C
Carnegie Telephone Company	431878	C
Central Oklahoma Telephone Company	431877	C
CenturyTel of Northwest Arkansas, Inc.	431143	C
CenturyTel of Northwest Arkansas, Inc.	431142	C
Cherokee Telephone Company	431075	C
Chickasaw Telephone Company	431988	C
Chouteau Telephone Company	431801	C
Cimarron Telephone Company	431882	C
Cross Telephone Company	431885	C
Elkhart Telephone Company, Inc.	411764	C
Gibson Telephone Company	431968	C
Grand Telephone Company, Inc.	431894	C
Hinton Telephone Company, Inc.	431886	C
KanOkla Telephone Association, Inc.	431789	C
Lewaca Telephone Co.	431784	A
McLoud Telephone Company	432003	C
Medicine Park Telephone Company	432008	C
Mid-America Telephone Company	432010	C
Oklahoma ALLTEL, Inc.	432011	C
Oklahoma Communication Systems, Inc.	431984	C
Oklahoma Telephone & Telegraph, Inc.	432013	C
Oklahoma Western Telephone Company	432014	C
Panhandle Telephone Cooperative, Inc.	432016	C
Pine Telephone Company, Inc.	432017	C
Pioneer Telephone Cooperative, Inc.	432018	C
Pottawatomie Telephone Company	432020	C
Salina-Spartan Telephone Company, Inc.	432022	C
Santa Rosa Telephone Cooperative, Inc.	432441	A
Shidler Telephone Company	432023	C
South Central Telephone Association, Inc.	431881	C
Southwest Oklahoma Telephone Company	432025	C
Terra Telephone Company	432029	C
Totah Telephone Company, Inc.	432030	C
Valliant Telephone Company	432032	C
Velox Telecommunications of Oklahoma, LLC	431165	C
Wyandotte Telephone Company	432034	C
ETC DESIGNATED	CAUSE NO.	ORDER NO./DATE
Cox Oklahoma's Telecom, L.L.C.	PUD #200200111	484785 / 8/20/2002
DeLoach Cellular Systems, Inc.	PUD #200300239	483864 / 9/26/2004
Epic Touch	PUD #200300087	484833 / 8/18/2004
Panhandle Telecommunications Systems, Inc.	PUD #200300890	488215 / 9/21/2004
Sage Telecom, Inc.	PUD #200300098	483517 / 8/13/2002
TerraCom, Inc.	PUD #200400137	484181 / 8/26/2004
US Cellular Corp.	PUD #200300185	485583 / 9/25/2004

**EXHIBIT C**

**Supplemental Affidavit Certifying Dobson's Use of Federal Universal Service Support  
for the 2004 Calendar Year**

**AFFIDAVIT OF DOBSON CELLULAR SYSTEMS, INC.  
REGARDING USE OF FEDERAL HIGH-COST SUPPORT FUNDS  
(4Q 2004)**

STATE OF OKLAHOMA     )  
                                  ) ss.  
COUNTY OF OKLAHOMA )

Thomas A. Coates, being first duly sworn, states:

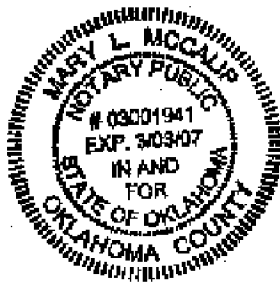
1. I serve as Vice President, Corporate Development for Dobson Cellular Systems, Inc. (Dobson). I am authorized to make this certification on behalf of Dobson.
2. I am a corporate officer responsible for certifying Dobson's use of Federal High Cost Universal Service Support.
3. Dobson has been recently designated as an eligible telecommunications carrier (ETC) within the meaning of Section 214(e) of the Telecommunications Act of 1996 (the Act) and is eligible to receive universal service support pursuant to Section 254(e) of the Act.
4. Dobson files this affidavit in compliance with 47 C.F.R. §§ 54.313 and 54.314 which require states to certify to the FCC and fund administrator, Universal Service Administrative Company (USAC), that all Federal High-Cost Universal Service Support within this State be used only for the provision, maintenance and upgrading of facilities and services for which the support is intended.
5. Dobson hereby certifies that it will use all Federal High Cost Universal Service Support received during the fourth quarter of 2004 only for the provision, maintenance, and upgrading of facilities and services for which the support is intended pursuant to Section 254(e) of the Act.

DOBSON CELLULAR SYSTEMS, INC.

By: Thomas A. Coates  
Thomas A. Coates  
Vice President, Corporate Development

Subscribed and sworn to before  
me this 7th day of October, 2004.

Mary L. McCalip  
Notary Public



**EXHIBIT D**

**The Oklahoma Corporation Commission's June 29, 2005 Letter Certifying Dobson's  
Use of Universal Service Support for the 2004 Calendar Year**

**BOB ANTHONY**  
Commissioner

**DENISE BODE**  
Commissioner

**JEFF CLOUD**  
Commissioner

**OKLAHOMA CORPORATION COMMISSION**

P. O. Box 52000-2000  
Oklahoma City, OK 73152-2000

**Joyce Davidson, Director**  
**Public Utility Division**

Phone: (405) 521-3908

Fax: (405) 521-3371

June 29, 2005

Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 Twelfth Street S.W.  
Washington, D.C. 20554

Re: CC Docket No. 96-45 -- State Certification of USF Support for Rural Carriers

Dear Ms. Dortch,

This letter is submitted pursuant to 47 CFR 54.314, which requires state certification of the use of federal universal service funds as a prerequisite for receipt of funding by rural incumbent local exchange carriers and/or eligible telecommunications carriers. We, the Oklahoma Corporation Commission (OCC), govern local services and rates in Oklahoma and are the appropriate authority to issue certification under § 54.314.

The OCC has obtained affidavits provided by a corporate officer, from each such rural carrier headquartered in Oklahoma, that include a sworn statement that support that any federal high-cost support received will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Therefore, we declare that to the best of our knowledge and belief, all federal high-cost support received by the identified carriers headquartered in Oklahoma (see Attachment 1) will be used only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

Our certification herein does not preclude us from reviewing in further detail how any rural carrier has employed its federal universal service funds and ordering that the use of funds comply with directives or policies we may set. Our certification is based on the best data available at this time. Our decision herein does not bind us in future or pending cases and we reserve the right to conclude, given better data or a more detailed review, that a company should employ its universal service funding differently than it does today or in the future.

We believe that this complies with the Federal Communications Commission requirement.

**EXCELLENCE IS OUR STANDARD**

Please acknowledge receipt of this filing by date stamping the extra copy of this letter and returning it to us in the self-addressed, stamped envelope provided for that purpose.

If you have any questions, please contact Eric Seguin, Chief of Telecom, at (405) 522-3765, or e-mail at [e.seguin@occcmail.com](mailto:e.seguin@occcmail.com).

Sincerely,

 **Eric Seguin**

Joyce Davidson  
Director  
Public Utility Division  
Oklahoma Corporation Commission

Attachment

Oklahoma Corporation Commission  
CC Docket No. 96-45  
State Certification of USP Support for Rural Carriers

June 29, 2005

Oklahoma Corporation Commission Supplemental Certification of Rural Eligible  
Telecommunications Carriers in Oklahoma not subject to the 2004 Annual Certification:

- 1) Dobson Cellular Systems, Inc.